

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No.: 99-1180-JTM
)	
AMR CORPORATION,)	
AMERICAN AIRLINES, INC., and)	
AMR EAGLE HOLDING)	
CORPORATION,)	
)	
<i>Defendants.</i>)	
)	

**UNITED STATES' STATUS REPORT
(PURSUANT TO MAY 16, 2000, MINUTE ORDER)**

The United States submits this Status Report pursuant to this Court's May 16, 2000, Minute Order.

I. Progress of Discovery

The United States submits the following information concerning the progress of discovery:

A. Deposition Scheduling

The United States has conducted the depositions of 20 of the 28 American witnesses that it has so far noticed, as well as the deposition of the only third party witness that the United States has noticed. Of the remaining 8 noticed depositions of American witnesses, we have received proposed dates of availability for 5 of those witnesses. Two depositions of American witnesses scheduled to

go forward on June 16, 2000, are being rescheduled due to flight cancellations that made it impossible for counsel for the United States to attend on June 16.

Depending upon the results of both the United States' review of documents submitted by American and third parties and the already-noticed depositions of American, the United States continues to believe that it may notice as many as an additional 10 American witnesses (either individually or pursuant to Fed. R. Civ. P. 30(b)(6)) and 5 to 10 third party witnesses. The third party witnesses may include, but are not limited to, person(s) from Delta Airlines, Southwest Airlines, Continental Airlines, Midwest Express, Dallas/Ft. Worth Airport Board, and Love Field Airport Authority.

According to Plaintiff's records, American has noticed 23 depositions and has completed 6 of these depositions. American has also commenced 2 of these 23 depositions but has not yet completed them; the dates for the continuation of these two depositions have not yet been scheduled.

B. Document Production by Third Parties

Production of documents by third parties subpoenaed by the United States as of the time of the United States' last Status Report is complete. Since then, the United States served two subpoenas for documents on two former American employees on June 3, 2000. American's counsel agreed to accept service of these two subpoenas. Depending upon the outcome of its review of American and third party documents, the United States continues to believe that it may serve one or two additional third party subpoenas.

The United States and American are also considering submitting a joint request under the Open Records Act to the Long Beach Airport Authority.

C. Document Production by the United States

Apart from additional documents required to be produced pursuant to Fed. R. Civ. P. 26(e)(2) (“Supplementation of Disclosures and Responses”), the United States will complete its production of documents responsive to American’s First, Second, Third, Fourth and Fifth Sets of Document Requests by June 19, 2000.

The United States has been unable to obtain the consent to the production of CID materials from one owner of CID materials (the American Society of Travel Agents (“ASTA”)). For a brief discussion of the issues relating to ASTA’s CID materials, see *infra* Section II(A). With the exception of the ASTA CID materials, the United States will complete its production of documents pursuant to this Court’s May 9, 2000, Memorandum and Order (“May 9 Order”) on June 19, 2000.

D. Document Production by American

The United States served its First Request for Production of Documents on October 22, 1999, its Second Request for Production of Documents on January 20, 2000, its Third Request for Production of Documents on March 3, 2000 and its Fourth Request for Production of Documents on May 11, 2000. As far as Plaintiff is aware, American is still in the process of completing its production of documents responsive to the United States’ first three Requests for Production of Documents. American has not yet formally responded to the United States’ Fourth Request for Production of Documents.

E. Interrogatories

The United States served its responses and objections to American’s Second Set of Interrogatories on May 2, 2000. American served its responses and objections to the United States’ Second Set of Interrogatories on May 2, 2000.

Pursuant to the Court's Revised Scheduling Order, both the United States and American served their Third (and last) Sets of Interrogatories on May 30, 2000. As a result of meet-and-confer discussions concerning the scope of certain of the interrogatories served by each party, the parties have agreed to extend the deadline for responses to these last sets of interrogatories (from June 30, 2000, to July 17, 2000), and anticipate filing a Stipulation and Order reflecting this agreed modification with the Court shortly.

F. Requests for Admission

The parties have agreed to begin working out stipulations as to authentication, foundation and admissibility of exhibits, as well as undisputed findings of fact. The parties believe that this process may obviate the need for many requests for admission that one party otherwise might serve on the other. In view of the parties' desire to avoid the need for drafting and serving unnecessary requests for admission, the parties agree and submit to the Court that the deadline for serving requests for admission should be moved to July 31, 2000, with responses due on August 31, 2000.

G. Supplementation of Discovery Responses and Initial Disclosures

The United States has supplemented its responses to American's First Set of Interrogatories four times (on October 22, 1999, January 18, 2000, March 16, 2000, and May 8, 2000). The United States supplemented to its responses and objections to American's Second Set of Interrogatories on June 5, 2000. The United States has supplemented its Rule 26(a)(1) Initial Disclosures twice (on October 15, 1999 and May 8, 2000). To date, American has not supplemented any of its written discovery responses. American has supplemented its Rule 26(a)(1) Initial Disclosures once (on October 1, 1999).

The United States believes that it would make sense to establish a cut-off date for searching

for documents required to be produced pursuant to Fed. R. Civ. P. 26(e)(2) (“Supplementation of Disclosures and Responses”), and suggests that a reasonable cut-off date for such searches is June 30, 2000, with any such supplemental productions to be completed no later than July 17, 2000.

II. Other Matters

The United States submits the following information concerning other issues that have arisen since the last Status Conference.

A. ASTA CID Materials

The United States will be filing a Motion for Clarification of this Court’s May 9 Order, arising out of ASTA’s declination to provide its consent to the production of its CID materials to American pursuant to the May 9 Order. Because the May 9 Order contemplates two grounds for the disclosure of CID materials (either consent of the owner of the CID materials or “use” in this case under the standard applied in *United States v. AT&T*), the United States seeks clarification of whether the Court intended to order that the United States produce CID materials not used in this case over the express objection of the owner of those materials.

B. Privilege Logs

The parties have been working together to resolve certain issues relating to the scope of materials that need to be logged on privilege logs and have begun the preparation of privilege logs. As of this date, however, no privilege logs have been exchanged. Plaintiff suggests that it would make sense to set a deadline for completion of privilege logs so that any disputes relating to documents being withheld as privileged could be resolved prior to the close of fact discovery.

C. Summary Judgment Briefing Schedule

The United States filed an Unopposed Request for Clarification or Correction of certain

portions of the Court's Revised Scheduling Order on April 28, 2000, seeking clarification or correction of several issues. By Order dated June 6, 2000, the Court granted in part and denied in part the United States' Unopposed Request. While the Revised Scheduling Order extended the time for trial by more than 7 months and for fact discovery by 5 months (consistent with American's request), it nevertheless shortened the period for responses to potentially dispositive motions by nearly half.

The United States understands that the Court wishes to have the maximum time possible for consideration of one or more complex potentially dispositive motions and fully supports that goal.¹ We also believe, however, that the 25 days provided for responses to such motions in the Revised Scheduling Order is insufficient under the circumstances. As such, and as set forth briefly below, the United States wishes to revisit its unopposed request concerning the dispositive motion briefing schedule if the Court would be amenable to further discussion of this subject.

The change sought by the United States, which would move the deadline for completion of briefing on potentially dispositive motions from February 19, 2001, to March 16, 2001, still provides the Court with more than two months for consideration of such motions, but reinstates the time for responses provided in the original Scheduling Order. Plaintiff feels strongly that the 45 days for responses originally contemplated by both the parties and the Court reflects a more realistic assessment of the time and effort that will be required to respond to the type of dispositive motions that are likely to be filed in this case. This appears particularly true given that the Court provided for 46 days even under the very aggressive pre-trial schedule entered in anticipation of the October 11,

¹Indeed, the United States submitted a proposed schedule that would have given the Court more than four months between the completion of briefing of potentially dispositive motions and trial.

2000, trial date. Finally, the United States believes that the longer time periods requested would also be consistent with the Court's desire for full and thorough consideration of potentially dispositive motions, by permitting time for preparation of responses and replies that will better frame the issues to the Court for decision.

Dated: June 19, 2000

Respectfully submitted,

COUNSEL FOR
PLAINTIFF UNITED STATES

_____/s/
By Craig W. Conrath
Department of Justice, Antitrust Division
325 7th Street, N.W. Suite 500
Washington, D.C. 20530
Tel: (202) 616-0944
Fax: (202) 353-8856